

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.173 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- AURANGABAD

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Smt. Kamla Devi, W/o Saryu Dubey, Resident of Village- Sansa, P.S.- Daudnagar,
District- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar
2. Parasar Dubey, S/o Late Rajeshwar Dubey, Resident of Village- Goh, Gola Par,
P.S.- Goh, District- Aurangabad.

.... Respondents

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Appearance :

For the Petitioner : Mr. Pramod Kumar Singh, Advocate
For the State : Mr. Gopesh Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 24-08-2017

The petitioner has filed this application for setting aside order dated 10.12.2015, passed by learned Additional Sessions Judge, VI, Aurangabad in Sessions Trial No.187 of 2015, arising out of Daudnagar P.S. Case No.0108 of 1993, whereby the petition filed by the petitioner dated 22.08.2015 was dismissed.

2. Brief background of the case is that the petitioner lodged a police case being Daudnagar P.S. Case No.0108 of 1993 under Section 302 IPC as well as Section 27 of the Arms Act against the sole accused Parasar Dubey. The police on completion of investigation, not finding the involvement of Parasar Dubey, did not send him for trial rather found evidence against one Ramanuj Dubey, accordingly charge-sheeted him. Later on the informant filed a petition and treating it as a complaint, another trial for the same



offence is also going on in which the accused is Parasar Dubey. Later on a petition was filed by accused Ramanuj Dubey to separate his case from Parasar Dubey and by order dated 13.06.2001 the Sessions Court relying on the judgment of Hon'ble Supreme Court, reported in 2000 Cr.L.J. 169 S.C. conducting the trial of both the accused separately but simultaneously and the judgment is to be pronounced on the same day and in view of the guideline two different prosecutors are conducting the case from the prosecution.

3. Now the grievance of the petitioner is that on the basis of police case Sessions Trial No.187 of 2015 as well as Sessions Trial No.69 of 2013 is proceeding simultaneously. In the police case in which Ramanuj Dubey is facing trial, the witnesses are being produced by the prosecution as per the list of witnesses mentioned in the charge-sheet but the objection of the petitioner-informant is that in fact they are defence witnesses and they should not be examined and out of which one witness, namely, Parshuram Singh, who has been examined as PW3, his evidence should be struck off merely on the ground that this witness is in fact not a prosecution witness.

4. The learned trial court has rightly rejected the prayer. The witnesses are produced by the prosecution side considering the list of witnesses submitted with the charge-sheet in this case. The responsibility of producing the witness lies on the prosecution side



whether the evidence of the prosecution witnesses is admissible or reliable or has turned hostile will be considered at the time of passing the judgment after appraisal of the evidence in totality. Second objection is that there is some error in the seriatim of the witnesses, the same may be corrected at any time before passing of the judgment, which requires to be corrected by the court at the first opportune moment. Accordingly, the necessary correction regarding seriatim of witnesses will be done by the trial court. As far as striking off the evidence of Parshuram Singh (PW3) is concerned, there is no error in the impugned order passed by the court.

5. With the aforesaid observations, this application is disposed of.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
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